



DISCRIMINATION COMPLAINT PROCESSING

Bureau of Workforce Development



Table of Contents

PURPOSE & OBJECTIVES	3
PURPOSE.....	3
TRAINING OBJECTIVES.....	3
LAWS & REGULATIONS	5
FEDERAL LAWS	5
STATE POLICY.....	9
LOCAL POLICY & PROCEDURES.....	9
COMMUNICATION.....	9
MEDIATION.....	11
ALTERNATIVE DISPUTE RESOLUTION	11
ACCOMODATIONS FOR THE MEDIATION PROCESS	13
RECEIVING & REVIEWING DISCRIMINATION COMPLAINTS.....	15
FILING OF A COMPLAINT	15
COMPLAINT INFORMATION	15
COMPLAINT LOG	16
DETERMINING TIMELINESS OF FILING.....	17
TYPES OF COMPLAINTS	19
DETERMINING JURISDICTION & BASIS OF COMPLAINT	21
BASIC COMPLAINT CRITERIA	21
LACK OF JURISDICTION	21
NOTICE OF ACCEPTANCE	23
INVESTIGATIVE PLAN.....	25
LEGAL THEORIES OF DISCRIMINATION.....	29

ELEMENTS OF PROOF	31
EXAMPLES OF ELEMENTS OF PROOF.....	32
INVESTIGATION	33
EVIDENCE GATHERING	33
TYPES OF EVIDENCE.....	35
FINAL ACTION	37
CORRECTIVE ACTION & SANCTIONS.....	39
DISCRIMINATION COMPLAINT PROCESSING FLOWCHART	41
CASE STUDIES	43
CASE STUDY DISCUSSION	45
FORMS.....	47
GLOSSARY	63
DEFINITIONS	63
SAMPLE LETTERS FOR DISCRIMINATION COMPLAINTS	65
SAMPLE 1 – NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT	67
SAMPLE 2 - NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT	69
SAMPLE 3 - NOTICE OF REFERRAL TO OUTSIDE AGENCY	71
SAMPLE 4 – NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT	73
SAMPLE 5 - INITIAL NOTICE OF ACCEPTANCE OF DISCRIMINATION COMPLAINT.....	75
SAMPLE 6 - LETTER ACCEPTING THE ALTERNATIVE DISPUTE RESOLUTION PROCESS	77
SAMPLE 7 - NOTICE OF FINAL ACTION AGAINST THE COMPLAINANT	79
RESOURCES.....	81
STATE POLICY.....	83

PURPOSE & OBJECTIVES

PURPOSE

This training is intended for all Local Workforce Investment Area (LWIA) Equal Opportunity (EO) Officers who handle the complaints filed against an entity receiving Workforce Investment Act (WIA) funds or an individual employed by such entities. By gaining the knowledge presented in this training course, the local EO officers will better understand how to handle complaints alleging discrimination.

TRAINING OBJECTIVES

By completion of this training the participant will:

- Have a better understanding of the Federal Laws that are required to be followed to ensure no discrimination is encountered by registrants, participants, staff, the general public, or any other person or entities.
- Be familiar with Alternative Dispute Resolution (ADR) as an alternative to resolving a discrimination complaint.
- Explain what is considered an appropriate receipt of a complaint and how the complaint is handled once received.
- Determine whether a received complaint meets one of the bases and is within the proper jurisdiction.
- Develop an investigative plan with the acceptable types of evidence and elements of proof associated with the evidence.
- Complete a notice of final action, including the findings and any corrective actions or sanctions that may be necessary.
- Have experience in processing a complaint from start to finish.

ADR is the
preferred method
of resolution

The training program and manual are broken into seven separate areas to ensure each of the objectives discussed are met. They include:

- The Laws & Regulations - Understand the Federal Laws that are required to be followed to ensure no discrimination is encountered by registrants, participants, staff, the general public, or any other persons or entities.

- Alternative Dispute Resolution - ADR or mediation will be discussed. Emphasis should be placed on ADR as the preferred alternative to resolving a discrimination complaint rather than an investigation and the subsequent enforcement and litigation that would follow. The list of 10 Reasons to Mediate will be provided.
- Receiving & Reviewing - Explain the various ways in which complaints can be received. Outline the steps to be taken once a complaint is received in their office. Also, the Time Table for processing the complaint will be covered.
- Determination of Complaint - The various types of complaints will be explained, including an evaluation of the information to determine the Jurisdiction and Basis of the complaint. The Initial Notice of Acceptance will be discussed along with setting up an Investigation Plan.
- Investigation Plan - The Types of Evidence acceptable to include in an investigation will be described. Elements of Proof for each category of discrimination will be outlined.
- Final Action - The final discussion will include the steps to take once a complaint has been thoroughly investigated. This will include the Corrective Actions and Sanctions that apply, as well as the Notice of Final Action (along with any additional mailings) to be sent to the complainant.
- Case Studies - Several Case Studies will be provided for the participants to review and determine the course of action to be taken in response to the complaint.

LAWS & REGULATIONS

FEDERAL LAWS

Many Federal laws have been promulgated to prevent discrimination in programs fully or partially funded with Federal money. Following is a discussion of each of the Federal Laws applicable to United States Department of Labor (DOL) Financial Assistance Recipients. The discussion also explains the type(s) of discrimination it is aimed at preventing.

Title VI - Civil Rights Act of 1964, as amended (29 CFR Part 31) - Title VI was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance.

"Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination."

*President John F. Kennedy
Civil Rights Speech June 11, 1963*



Title VI itself prohibits intentional discrimination. However, most funding agencies have regulations implementing Title VI that prohibit recipient practices that have the effect of discrimination on the basis of race, color, or national origin. While the clearest example of Federal financial assistance is the direct receipt or award of



President Lyndon B. Johnson
signs the Civil Rights Act of 1964

money, it can include more than items of monetary value. It is also the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. It is important to remember that not only must a program receive Federal financial assistance to be subject to Title VI, but the entity also must receive Federal assistance at the time of the alleged discriminatory act(s). Assistance can be directly received by the recipient or indirectly received through another party.

The US Department of Justice has published a Title VI legal manual to assist Federal agencies that provide financial assistance, the wide variety of recipients that receive such assistance, and the actual and potential beneficiaries of programs receiving Federal assistance. Additionally, the Department has published an Investigation Procedures Manual to give

practical advice on how to investigate Title VI complaints. Available on the Coordination and Review Website are a host of other materials helpful to those interested in ensuring effective enforcement of Title VI. These publications may be accessed through DOJ website located at <http://www.usdoj.gov/crt/cor/pubs.htm>.

Amendments to the Civil Rights Act include the Equal Employment Opportunity Act of 1972 and the Pregnancy Disability Act of 1978.

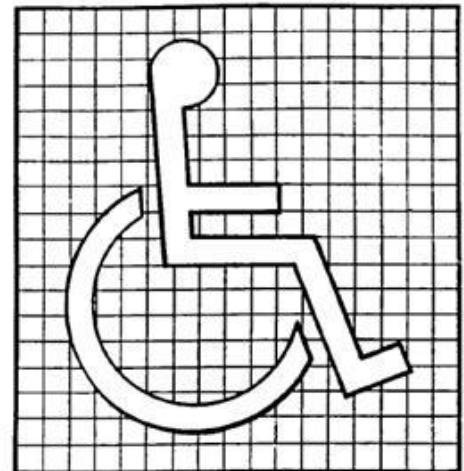
Section 504 of the Rehabilitation Act of 1973, as amended (29 CFR Part 32) - The nondiscrimination requirements of the law apply to employers and organizations receives financial assistance from any Federal department or agency, including the U.S. Department of Health and Human Services (DHHS). These organizations and employers include many hospitals, nursing homes, mental health centers and human service programs.

Section 504 forbids organizations and employers from excluding or denying individuals with disabilities an equal opportunity to receive program benefits and services. It defines the rights of individuals with disabilities to participate in, and have access to, program benefits and services.

Section 504 protects qualified individuals with disabilities. Under this law, individuals with disabilities are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of or who are regarded as having a physical or mental impairment that substantially limits one or more major life activities are also covered. Major life activities include caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual tasks, and learning. Some examples of impairments which may substantially limit major life activities, even with the help of medication or aids/devices, are: AIDS, alcoholism, blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, drug addiction, heart disease, and mental illness.

In addition to meeting the above definition, for purposes of receiving services, education or training, qualified individuals with disabilities are persons who meet normal and essential eligibility requirements.

For purposes of employment, qualified individuals with disabilities are persons who, with reasonable accommodation, can perform the essential functions of the job for which they have applied or have been hired to perform. (Complaints alleging employment discrimination on the basis of disability against a single individual will be referred to the U. S. Equal Employment Opportunity Commission for



(a)
Proportions



(b)
Display Conditions

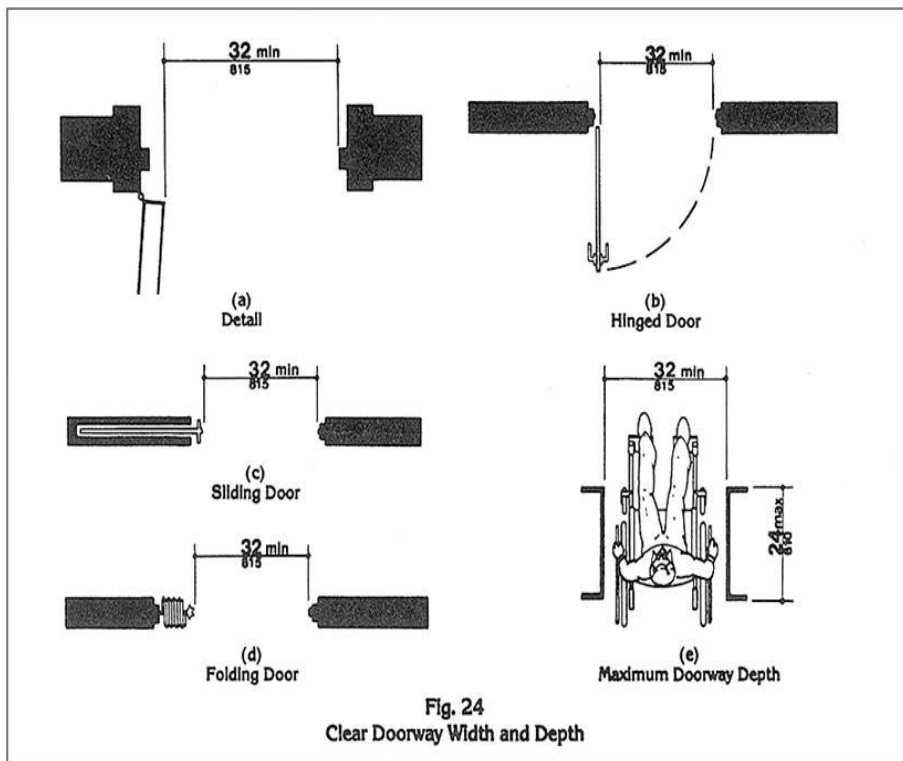
Fig. 6
International Symbol of Accessibility

processing.) Reasonable accommodation means an employer is required to take reasonable steps to accommodate your disability unless it would cause the employer undue hardship.

Americans with Disabilities Act (28 CFR Part 35) - Title I of the Americans with Disabilities Act of 1990, which took effect July 26, 1992, prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities. Discrimination is prohibited in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment. An individual with a disability is a person who:

- Has a physical or mental impairment that substantially limits one or more major life activities;
- Has a record of such an impairment; or
- Is regarded as having such impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodation may include, but is not limited to:



- Making existing facilities used by employees readily accessible to and usable by persons with disabilities.
- Job restructuring, modifying work schedules, reassignment to a vacant position;
- Acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to make an accommodation to the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and structure of its operation.

An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obligated to provide personal use items such as glasses or hearing aids.

Title IX, Education Amendments Act of 1972 (49 CFR Part 25)- Title IX of the Education Amendments of 1972, now known as the **Patsy T. Mink Equal Opportunity in Education Act** in honor of its principal author, but more commonly known simply as **Title IX**, is a simple 37-word United States law enacted on June 23, 1972 that states: "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance", except as described under special provisions of the Act. The legislation covers all educational activities. Complaints under Title IX alleging discrimination in fields such as science or math education, or in other aspects of academic life such as access to health care and dormitory facilities, are not unheard of. It also applies to non-sports activities such as school bands and cheerleaders.

Age Discrimination in Employment Act of 1967 (Public Law 90-202) - Also known as the ADEA, it prohibits employment discrimination against persons 40 years of age or older. The law also sets standards for pensions and benefits provided by employers and requires that information about the needs of older workers be provided to the general public. It applies to employers with 20 or more employees in such areas as hiring/firing, layoffs, promotions and wages, denial of benefits, and job notices/ advertisement. It applies to mandatory retirement ages for some executives over age and some employees over age 70 who have unlimited contract tenure at colleges or universities.

Age Discrimination Act of 1975 (29 CFR Part 25) - The Age Discrimination Act of 1975 is a law which prohibits discrimination based on age in programs or activities that receive federal financial assistance, for instance, financial assistance to schools and colleges, provided by U.S. Department of Education. The Age Discrimination Act of 1975 does not cover employment discrimination. Complaints of employment discrimination based on age may be filed with the Equal Employment Opportunity Commission, under the Age Discrimination in Employment Act.

Section 188 of the Workforce Investment Act (29 CFR Part 37) - Section 188 prohibits discrimination on the basis of a disability in connection with any activities administered under the provisions of the Workforce Investment Act (WIA). No individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

The Equal Pay Act of 1963, as amended - This law is intended to protect employees from wage discrimination on the basis of gender. While the Act covers discrimination against men and woman, it was initially enacted to remedy the pay difference between women and men holding similar positions.

All Above Laws - Each of the laws discussed above contain provisions that prevent the retaliation, intimidation, or reprisal of any individual filing or intending to file any complaint alleging discrimination.

STATE POLICY

All recipients of federal funds administered through the Department of Commerce & Economic Opportunity are required to follow policy and directives developed to establish administrative control over the use of such funds. These requirements are to set standards that are equal to or more stringent than the Federal requirements pertaining to such funds distribution.

State policy is distributed to the recipients of Federal funds through WIA Policy Letters, WIA Notices, and WIA TAILs (Technical Assistance and Information Letters). These directives are available for review on the DCEO website or may be requested from the DCEO Bureau of Workforce Development (BoWD) or the local office.

Policy that relates to complaints of discrimination or complaints in general includes:

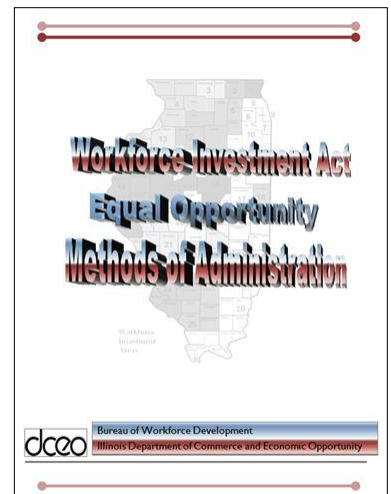
- PY'00 EO/WIA Policy Letter No. 00-08 - Methods of Administration - Element 8 - Complaint Processing Procedures (June 20, 2001)
- PY'00 EO/WIA Policy Letter No. 00-09 - Methods of Administration - Element 9 - Corrective Actions/Sanctions (June 20, 2001)
- WIA Policy Letter No. 04-05 - WIA Complaint and Grievance Procedures (Non-Discrimination) (June 10, 2005)
- WIA Policy Letter No. 06-PL-28 - Local Workforce Investment Area (LWIA) Incident Reporting Procedures (May 4, 2007)

LOCAL POLICY & PROCEDURES

Element 8 of the Methods of Administration requires that each LWIA develop local policy on complaint processing. The policy is required to be equal to or more stringent than the requirements of the State policy on complaint processing as outlined in PY'00 EO/WIA Policy Letter No. 00-08, Methods of Administration - Element 8 - Complaint Processing Procedures (June 20, 2001). This requirement, as well as any other local policy must be complied with during the entire complaint processing.

COMMUNICATION

Information regarding the complaint process should be made available publicly. Posters informing and instructing applicants on complaint procedures should be posted throughout the One-Stop System, as well as other recipient, sub-recipient, and affiliate sites. During the intake interview, applicants are provided information on the complaint processing system.



MEDIATION

ALTERNATIVE DISPUTE RESOLUTION

Alternative Dispute Resolution (ADR) (also known as mediation) is an alternative to the traditional investigation or litigation process. It is an informal process that is entirely voluntary for the charging party and the respondent. A neutral (and impartial) third party assists the opposing sides to resolve the charge of discrimination. ADR gives the parties the opportunity to discuss the issues of the claim, clarify misunderstandings, establish underlying interests or concerns, identify areas of common agreement, and ultimately agree upon a resolution that is acceptable to both parties. The third-party mediator does not resolve any of the issues or provide a resolution to the two parties. They simply act as a helper to the parties to agree on the mutual resolution. Mediation is basically an assisted negotiation between the two conflicting parties.

Mediation can resolve disputes quickly and satisfactorily without the expensive litigation and delays of a formal investigation. The process may involve one or more meetings between the disputing parties and the mediator, as well as individual confidential meetings between each party and the mediator. The ADR process and all the evidence and discussions associated with it should be maintained as confidential information. Mediators are not judges, nor do they ultimately decide the fate of either party. They are handed the task of managing the discussion between both parties to ensure a safe environment for the process. The disputing parties should understand the mediator is impartial and seeks to attain a balance of power between the two parties.



If successful, the mediation (or ADR) process will result in a binding agreement between both parties with clear and concise resolutions. When the mediation process is unsuccessful in establishing a clear, concise resolution, the two parties may still pursue legal action through the process and procedures contained in the specific Law applicable to the allegation, as well as the WIA Policy Letter outlining Complaints of Discrimination.

There are many advantages to the Alternative Dispute Resolution process including:

- **Cost Savings** - Mediation is generally less expensive than taking a conflict to the courts. Court costs can be very expensive and may outweigh the benefits of an ultimate decision. Many mediation cases can be settled in one or two days compared to weeks and months of expensive lawyer fees to receive a court decision. Mediators charge less per hour compared to high priced lawyers. Because the process is easier and simpler than court proceedings, costs associated with time away from normal business are reduced.

- **Fair and Neutral Say** - Each party is allowed an opportunity to present their sides to the dispute. The mediator ensures each side has satisfactorily presented evidence and information. When tension or disagreements occur, private discussions with the mediator can be held to further discuss the issues. Both parties receive equal say in the process. Ultimately, the two parties, not the mediator, determine the resolution. This type of process reduces the emotional nature of taking a dispute to the courts. Having a discussion involving the personal issues can assist in developing a new understanding of the other party, as well as yourself. In many cases, court proceedings can divide the two sides, creating a hostile environment for the future. Preventing such tension can allow for continued cooperative relationships.
- **Time Savings** - Civil litigation can be drug out over the course of several weeks. The ADR process is designed to reduce the overall procedures to resolve the dispute. In general, most resolutions can be agreed upon in a matter of days. Because of the informal nature, the time to prepare for a mediated decision is far less.
- **Confidentiality** - All information presented during ADR is maintained as confidential. There is no expectation or requirement that the information disclosed should be shared or revealed to any other parties, including the EO investigative or legal staff. Because this is a private process, the case is not subject to public knowledge or potential media attention. In a civil case, this cannot be guaranteed.



- **Avoidance of Litigation** - Mediation is not only cost efficient, but avoids the potential uncertainty of a judge's decision. While attorneys can be retained by either party during the mediation process, it is not a requirement. They are only participants if requested by one or both of the parties. There is no jury in ADR, thus the risk of an unwarranted award is greatly reduced. Trained mediators are generally seasoned professionals who can be counted on to be totally impartial and unlikely to be swayed by the emotion of the dispute. Litigation is generally time consuming and costly. While

an unresolved ADR case can proceed to civil litigation, it is much more advantageous to approach a resolution through this process first.

- **Fosters Cooperation** - The nature of the mediation process is to allow both sides equal say. Participants are allowed equal time to express their opinions and concerns. It is a problem-solving approach aimed solely at reaching a mutual agreement. It provides a safe environment to discuss the parties' differences. It is neither therapy nor a "day in court". The parties may receive a higher level of satisfaction from the decision, because they were actively involved in the resolution, whereas in a court determination there is no guarantee either party is truly satisfied with the outcome given by the judge. This joint cooperation has proven to lead to a higher commitment to abiding by the settlement terms. Going to court can divide parties and create an even higher level of hostility than what has been created by the dispute already.

- **Reduction in Disruption** - Because the nature of the mediation process is to expedite an ultimate decision, disruptions are minimized. Time away from normal duties to participate in meetings with lawyers, be present at court proceedings, and attend to employee hostilities resulting from the dispute is greatly reduced. In some cases where a resolution can be reached in only one or two days, disruption may not be evident. In many cases, the process can be held at the complainant or respondent's place of business, which further reduces the time and expense of travel for one or both parties.
- **Improved Communication** - The process provides for a neutral and confidential setting, thus it can be less intimidating than taking the issues to court. This informality in proceedings allows both parties to find the best path to an agreement. There are no strict rules on the conduct of mediation. Multiple parties and a variety of issues can be addressed at one time, unlike in a court setting with strict guidelines for all parties involved. The mediator ensures a smooth flow of information by both parties and seeks to allow equal time for discussion.
- **Designed Solution** - The focus of ADR is a joint resolution that both parties have agreed on and committed to complying with. It looks at the unique situation and needs of the parties involved by examining the underlying problems of the dispute. The legal dispute is only a portion of the settlement agreement. Mediation can also resolve any additional issues that are important to the parties. By designing the solution together, a continued relationship is possible. Sometimes the discovery of the real issues can result in an even healthier relationship.
- **Everyone Wins** - An independent survey reported by the Equal Employment Opportunity Commission indicated that 96% of all respondents and 91% of all charging parties (claimants) who used ADR to resolve a dispute would do so again. A judge's decision is to interpret law and rule accordingly. There is no guarantee that a judge's decision will satisfy either of the parties, much less both. Mediation is designed to satisfy both parties by allowing them the opportunity to make their own choices. The mediation process preserves or repairs the relationship between the parties.

ACCOMMODATIONS FOR THE MEDIATION PROCESS

In some cases, individuals with disabilities will be involved in the mediation process and might require an accommodation to ensure full participation. Such accommodations might include:

- Assistance with communication: verbal, written, or both.
- Schedule meeting times to allow for appropriate breaks and availability of transportation.
- Set meeting locations to allow for adequate transportation needs and proper building access requirements.
- Environmental considerations such as lighting, noise, chemicals or other contaminants, etc.

- Personal assistant to a party throughout the mediation process.
- Other modifications that may be necessary to allow for full access to the information presented throughout the mediation process.

ALTERNATIVE DISPUTE RESOLUTION IS THE PREFERRED METHOD OF RESOLUTION!



RECEIVING & REVIEWING DISCRIMINATION COMPLAINTS

FILING OF A COMPLAINT

Any person who believes either he/she or any group of individuals, has been or is currently being subjected to discrimination prohibited by the Workforce Investment Act or any other regulation prohibiting such actions on the basis of race, color, religion, sex national origin, age, disability, political affiliation or belief may file (or have a representative file) a written complaint of discrimination. Complaints must be submitted **within 180 calendar days** of the date of the alleged discriminatory act(s) or activity(ies).

Complainants may file the complaint with the Local Workforce Investment Area (LWIA) or the United States Department of Labor (DOL), Civil Rights Center (CRC). Complaints filed with the CRC should be mailed to:

The Director of the Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue NW, Room N-4123
Washington, DC 20210

This information is also included on the pamphlet titled, "Illinois Department of Commerce and Economic Opportunity - Workforce Investment Act Discrimination Complaint Procedures".

A complainant may file a complaint by either completing the State of Illinois Workforce Investment Act Complaint form (if filing the complaint with the local office) or by completing CRC's Complaint Information Form and Privacy Act Consent Form, which may be obtained from the local EO Officer or from the CRC website (<http://www.dol.gov/oasam/programs/crc/aboutcrc.htm>).

COMPLAINT INFORMATION

The written complaint must contain at a minimum, the following information:

- The complainant's name and address (or other means of contacting the complainant);
- The identity of the respondent (the individual or entity that the complainant alleges as responsible for the discrimination);
- A description of the complainant's allegations including enough detail to allow the LWIA EO Officer (or the CRC) to determine who has jurisdiction over the complaint, the complaint was

filed in a timely fashion, and the complaint has apparent merit (in other words, the allegations outlined in the complaint would violate any of the non-discrimination and equal opportunity provisions of WIA, Part 37, or other applicable statutes); and

- The complainant's signature (or their authorized representative).

COMPLAINT LOG

In every instance that an LWIA receives a complaint alleging discrimination, the local EO Officer should initiate entry of the complaint on the Discrimination Complaint Log to detail the information and timelines surrounding the allegation. An example of a complaint log can be found in the Forms section of the manual.

The complaint log should provide for the gathering of at least the following information:

- Name and address of the complainant;
- Date of the alleged discrimination;
- Basis of the complaint;
- Description of the complaint;
- Date of the alleged complaint;
- Disposition of the complaint; and
- Date of disposition of the complaint.

Additional information that may be valuable throughout the investigative process may be added to the complaint log or maintained on a secondary log or journal of information. Such items might include:

- Date the complaint was filed/received;
- The name of the DOL-Funded program associated with the alleged discrimination;
- Name of the respondent; and
- Indication of whether ADR was utilized or not.

A secondary benefit of the complaint log is that it provides a means to analyze complaints within an LWIA, DOL-Funded Program, specific recipient, or other entity. Statistical analysis can be conducted to determine trends in alleged discrimination cases. Analysis can be expanded further to include surrounding or similar entities or even be conducted on a statewide basis.

DETERMINING TIMELINESS OF FILING

Complaints must be filed **within 180 calendar days** of the date of the alleged discrimination for them to be considered timely. If the EO Officer or his/her designee determines that the complaint **was not filed** within the 180 day timeline, a letter acknowledging receipt of the discrimination complaint must be sent to the complainant **within 10 calendar days** informing them that their complaint timeline has expired. The letter must also inform the complainant that they may file the complaint with the U.S. Department of Labor, Civil Rights Center (CRC) **within 30 calendar days** of the receipt of this notification requesting an extension of the timeline. An example of a letter informing the complainant that they have exceeded the acceptable 180 day timeline can be found in the Sample Letters (Sample 1) section of the manual.

Time limits are measured in terms of calendar days, not workdays (or business days). The time limit begins upon the receipt of a written complaint, regardless of the information completeness on the complaint. The time frames provide for adequate administrative time to review the information and materials related to the allegation, as well as allows for an expeditious resolution of the complaint.

If a complaint of discrimination is determined to have been filed in an untimely manner, the complainant must be advised that they may solicit the Director of the Civil Rights Center to obtain a waiver. Only the CRC, with good cause shown, may extend the filing time beyond the 180 days. The timeframe for filing a complaint is set to provide adequate administrative processing time for the CRC and does not constitute a defense for the respondent. In cases where the aggrieved party fails to comply with the time requirements set throughout the entire process, the aggrieved party is said to have abandoned their complaint and the matters will be considered resolved. A failure to provide a final decision within the appropriate timeline along any step of the proceedings constitutes denial and the complainant may proceed to the next step.



TYPES OF COMPLAINTS

There are three main categories of complaints alleging discrimination.

- **Individual** - A single person (or their representative) alleges discrimination against him/herself.
- **Class Action** - A group of individuals or an entity alleges discrimination against themselves. (This type of complaint must be accompanied by a written consent of all individuals alleging the discrimination.)
- **Third Party** - An individual or entity alleges discrimination on behalf of an individual or entity other than themselves. (This type of complaint must be accompanied by a written consent of all individuals alleging the discrimination.)

DETERMINING JURISDICTION & BASIS OF COMPLAINT

BASIC COMPLAINT CRITERIA

After the complaint has been logged into the Complaint Log, the EO Officer or his/her designee must determine if they have jurisdiction over the complaint. In determining the jurisdiction of a complaint, the EO Officer must ensure the complaint meets the following basic criteria:

- The complaint must allege discrimination on the basis of a prohibited provision of one or more of the statutes enforced.
- The complaint must allege that the discrimination is occurring or occurred in a program or activity that receives Federal financial assistance.
- The actual issue or subject matter alleged in the complaint must be covered by one or more of the statutes enforced.
- The alleged discrimination must have occurred within the boundaries defined by the recipients within a particular One-Stop system, recipient programs within the One-Stop system, applicable laws and regulations, and within the geographical area of coverage of the recipient.



LACK OF JURISDICTION

If an EO officer determines that they **do not have jurisdiction** over the alleged complaint of discrimination, they must notify the complainant **within 10 calendar days** of the receipt of the complaint. The notification must be in writing and must indicate the reason for the determination. A sample letter indicating receipt of a complaint that is not within the jurisdiction of the EO Officer can be found in the Sample Letters (Sample 2) section of the manual.

Whenever possible, the EO Officer should attempt to determine who has jurisdiction of the complaint and should notify the proper Agency or Department within 10 days. A letter should be written to the referral agency that includes a copy of the discrimination complaint and the statutes or other supporting information indicating the reasons for the referral. An example of a letter of referral to an outside agency can be found in the Sample Letters (Sample 3) section of this manual.

NOTICE OF ACCEPTANCE

If the EO Officer or his/her designee determines that the complaint of discrimination falls under their jurisdiction, they must issue a written notice of receipt to the complainant within 5 days. The notice of receipt must be sent to all individuals and entities that are included in submitting the complaint, as well as all individuals and entities that may be found jointly or severally liable.

The notice of receipt must include the following information:

- Acknowledgement that the written complaint has been received;
- The complaint processing timeline including the fact the total timeline allowed to process a complaint is **90 days from the date the complaint was filed**;
- Notice that the complainant has the right to seek legal counsel or other representation during the complaint process;
- Information regarding the complainant's right to present and/or rebut evidence; and
- Information on the Alternative Dispute Resolution (ADR) as a means to resolve the complaint prior to formal litigation.

An example of a Notice of Receipt can be found in the Sample Letters (Sample 4) section of the manual.

Within 15 days of the issuance of the Notice of Receipt, the EO Officer must issue an Initial Notice of Acceptance to indicate to the complainant that they have accepted the complaint and have begun the fact-finding and investigation process. This Initial Notice must contain the following information:

- A statement reiterating the issues raised in the complaint (each issue should be addressed in a separate statement to reduce the potential confusion created when trying to merge multiple issues into one sentence);
- An indication that the LWIA will accept the issues for investigation or reject them and the reasons for such rejection; and
- The establishment of a time line for fact finding or investigation of the information surrounding the circumstances of the complaint.

An example of an Initial Notice can be found in the Sample Letters (Sample 5) section of the manual. Questions seeking additional information may be attached to the letter. Any questions sent at this time should be developed based on the information identified as needed in the Investigation Plan (which will be discussed later).

If a complainant chooses to utilize the mediation process (ADR), they **must notify the EO Officer in writing within 10 calendar days** of the date they received the Notice of Receipt. An example of a letter accepting the mediation process can be found in the Sample Letters (Sample 6) section of the manual. Failure to provide such written notification within the allowable time is an automatic waiver of the right to mediation. The complainant must be informed that at any point during the mediation process, or if the mediation is unsuccessful in providing an agreed upon resolution, they may choose to go through a formal legal process. The complainant should keep in mind the timelines for the entire complaint processing procedures to ensure they notify the EO Officer or his/her designee to allow adequate time to move to the formal investigation.

INVESTIGATIVE PLAN

If a complainant chooses to seek resolution through an investigation, a strategy to address each of the issues brought forward in the discrimination complaint must be developed. Proper planning for the investigation is crucial to ensuring adequate information is compiled to either support or refute a claim of discrimination. Important steps in the investigation process to plan for should include:

- Notification of both the complainant and the respondent to the fact a formal investigation will occur in order to provide a resolution to the issue(s) outlined in the complaint alleging discrimination;
- Determination of who will conduct the investigation process;
- Confidential discussion of the allegations with both the complainant and the respondent;
- Interviews of witnesses as appropriate to obtain additional information aimed at determining if an act or activity of discrimination has occurred;
- Review of all information by the investigator to determine whether sufficient evidence exists to support the issue(s) alleging discrimination;
- Completion of a report of findings; and
- A suggested means of reconciliation of each of the discriminatory act(s) or activity(ies).

To assist in gathering the information necessary to conduct the investigation, an Investigative Plan should be developed. The Investigative Plan should include the following information:

- Complaint allegations, including adverse action
- Potential violation(s) (alleged discrimination)
- Legal theory (elements of proof)
- Questions to be answered
- Information gathered and on file
- Additional information yet to be gathered
- Source of the additional information needed



A sample Investigative Plan worksheet follows on the next page and is available in the Forms section of the manual.

INVESTIGATIVE PLAN:
 Complaint No. _____ Complainant (C) _____ Recipient (R) _____ Page _____ of _____
 Date _____ Page _____

Complaint Allegations	Potential Violations	Legal Theory DT/DI	Questions to be Answered	Information on File	Further Information Needed	Source
		(Disparate Treatment and/or Disparate Impact)				

LEGAL THEORIES OF DISCRIMINATION

There are four primary legal theories that may be used in establishing a particular case is of a prohibited discrimination. These theories set forth the basis of a legitimate allegation of discrimination and include:

- **Disparate Treatment** - This type of discrimination is an intentional act to treat similarly situated persons differently (i.e. less favorably) than others because of their race, color, national origin, religious beliefs, political affiliations, sex or age.
- **Disparate Impact** - This type of discrimination does not require proof of intent, rather it looks at the ultimate effect of a set of actions. Disparate impact cases involve claims that a recipient is violating non-discrimination Federal or Local laws, regulations, policies, or procedures by utilizing a neutral policy or practice that has the ultimate effect of disproportionately excluding or adversely affecting members of a protected group, and the recipient's policy or practice lacks a substantial legitimate justification of such requirements.



- **Denial of an Accommodation** - This is the refusal to provide a reasonable accommodation to a qualified individual with a disability when there is a legal obligation to do so.
- **Retaliation** - The adverse action taken against an individual(s) because they file or intend to file a complaint alleging discrimination, oppose discriminatory practices or participate in investigations of complaints alleging discrimination.

ELEMENTS OF PROOF

In any complaint alleging discrimination, each party to the complaint has the responsibility to prove or disprove that the discrimination occurred. The complainant initially has the burden of establishing that a prima facie case of discrimination. This requires that there be evidence that shows the following:

- The complainant is a member of a protected group;
- The complainant was harmed by the act(s) or activity(ies) involving alleged discrimination; and
- Similarly situated individuals of a different group were or would not have been harmed under similar circumstances.

The burden then shifts to the respondent to articulate a legitimate non-discriminatory reason for the act(s) or activity(ies). This is the basis for the respondent's defense.

The burden then returns to the complainant to establish that the defense offered is untrue or pre-text to discrimination. An investigative process will obtain evidence that addresses all of these points: An investigator will determine whether the respondent's reason is untrue by:

- Reviewing comparative data;
- Showing that others, not in the complainant's group, were treated differently under comparable situations;
- Showing that normal policies and procedures were not followed in making the decision involving the complainant; and
- Showing that policies normally followed for similarly situated persons were not followed for the complainant.

EXAMPLES OF ELEMENTS OF PROOF

To further clarify the information that may reflect an act(s) or activity(ies) of discrimination, the following are examples of proof that may indicate discrimination for each of the four Legal theories:

Disparate Treatment

- Whether complainant belongs to a protected group;
- Whether complainant was harmed by a decision;
- Whether the complainant applied for and was eligible for a federally assisted program that was accepting applicants;
- Whether despite the complainant's eligibility, he or she was rejected;
- Whether similarly situated employees were not harmed under similar circumstances;
- Whether there was a legitimate, non-discriminatory reason for the decision; and
- Whether the stated reason for the decision was pretext.

Disparate Impact

- Whether the respondent has a facially neutral policy or practice that has affected the complainant;
- Whether the policy or practice operates to disproportionately exclude members of the protected group;
- Whether the policy or practices is a business necessity;
- Whether there is an effective business alternative with less adverse impact;

Denial of an Accommodation

- Whether complainant requested accommodation for a religious observance or practice or for a disability;
- Whether the respondent did not grant the request for accommodation;
- Whether the respondent could reasonably make the accommodation without undue hardship.

Retaliation

- Whether complainant opposed any practice made unlawful or participated in any manner in an activity pursuant to the laws against discrimination;
- Whether the individual who allegedly retaliated against complainant knew or should have known of the opposition or participation;
- Whether an adverse action was taken against complainant subsequent to the protected activity;
- Whether there was a causal connection between the opposition or participation and the decision made involving complainant;
- Whether there was a legitimate, non-discriminatory reason for the employment action;
- Whether the articulated reason is a pretext for retaliatory discrimination.

INVESTIGATION

If a complainant chooses to seek resolution through an investigation, a strategy to address each of the issues brought forward in the discrimination complaint must be developed. It is important to keep in mind that the investigation process is a fact-finding process aimed at gaining information that will assist in the determination that a discriminatory act(s) or activity(ies) has occurred. Important steps in the investigation process to plan for include:

- Notify both the complainant and the respondent to the fact a formal investigation will occur in order to provide a resolution to the issue(s) outlined in the complaint alleging discrimination;
- Determine who will conduct the investigation process;
- Conduct individual and confidential discussions of the allegations with both the complainant and the respondent;
- Interview witnesses as appropriate to obtain additional information aimed at determining if an act or activity of discrimination has occurred;
- Review information by the investigator to determine whether sufficient evidence exists to support the issue(s) alleging discrimination;
- Complete a report of findings; and
- Suggest means of reconciliation of each of the act(s) or activity(ies) that are determined to be discriminatory.

EVIDENCE GATHERING

Interviews are direct form of information gathering. Interviews should be conducted with the complainant, the respondent, and witnesses of both parties. Tips to consider when conducting interviews include:



- Properly prepare for the interview
- Describe the purpose of the interview to each individual to be interviewed
- Encourage chronological narratives when appropriate
- Use pointed questions to clarify



- Do not provide "leading questions" that can encourage an answer or fact of information.
- Confront contrary evidence
- Record statements precisely as they are expressed
- Identify additional witnesses or documents
- Establish a game plan so that you know what end result you are seeking



When necessary, obtain written statements from the individual being interviewed to ensure the information is not lost in translation. This can be done through the use of **interrogatories** or written questions used to obtain written responses from the complainant, witnesses, or the respondent. They are helpful in clarifying allegations or obtaining official positions statements.

Requesting **documentation** is a third form of information gathering. Documentation can be used to support previously provided answers, indicate policy and/or procedural requirements, and provide general data about the individuals, job descriptions, termination letters, job offers, formal and informal correspondences, medical assessments, etc.

TYPES OF EVIDENCE

When conducting interviews, obtaining written statements, and gathering documentation, evidence is being acquired. There are four basic forms of evidence: Documentary, Testimonial, Direct or Real, and Circumstantial.

- **Documentary** - Evidence that is in written form, computerized data, or other forms of "hard copy". Business records, memoranda, emails, letters, applications, charts, logs, notes, etc. in virtually any format can be considered documentary evidence. This form of evidence is essential in order to fully investigate a complaint of discrimination. If there are large volumes of data or records, obtaining the information in a computerized format may be helpful to conduct analysis, calculations, and assessments of the information more readily.
- **Testimonial** - Evidence that is provided verbally (i.e. sworn testimony). Testimonial evidence is that which is obtained through interviews and other forms of oral communication. Interview questions are a gathering of evidence to investigate and prove not only a prima facie case, but also to test the validity or truthfulness of any stated or anticipated defenses of the other party. By addressing known or anticipated defenses "up front" when you plan your investigation and identifying evidence you will want to obtain, you will save time and possible aggravation of additional requests for information and data.
- **Direct** - Evidence of the actual, subjective intent of the person or entity charged with discrimination. This form of evidence is also known as "real" evidence. It may involve an admitted act of discriminatory purpose that may occur during an interview, when a person is explaining or justifying their actions. It also may include any facts that may establish the subjective motives of the person or entity involved in the alleged discrimination such as through public speeches or statements, minutes of hearings, or contemporaneous statements that may be attributed to a third party.
- **Circumstantial** - Evidence of facts from which one may infer intent or discriminatory motive as is generally found in the bulk of investigative findings of disparate treatment. Intent is proven by using objectively observed data (focusing on the outcome or results of an action or activity) rather than focusing on subjective intent (the reason why an action or activity was taken). The accumulation of circumstantial evidence leads to an inference of discriminatory motive.

FINAL ACTION

All formal investigation processes will culminate in a judge's and/or jury's ultimate decision based on the facts and information provided during the legal deliberations. The EO Officer or his/her designee will issue a notice of final action **within 90 calendar days** of the date the complaint was filed with the local office. This notice shall contain the following information:

- A detailed statement addressing each of the issues raised in the complaint, the disposition taken towards each issue, and the reason for such determination;
- A description of the final resolution(s) of each issue by the court;
- If the Alternative Dispute Resolution process was utilized, the signed settlement that both parties agreed to shall be attached to the notice;
- Information to the complainant that they have the right to dispute any or all of the resolutions of the court by filing a complaint with the U.S. Department of Labor, Civil Rights Center (CRC) within **30 days of the date** of the notice of final action; and
- The timelines necessary for the local office to issue a notice of final action is **90 days from the date the complaint was filed**. If the local office fails to provide such a notice to the complainant in the allowable time, the complainant may file a complaint directly with the CRC **within 30 days of the expiration** of the 180- day period.

An example of a letter notifying the complainant of the final actions can be found in the Sample Letters (Sample 7) section of the manual.

CORRECTIVE ACTION & SANCTIONS

If, through the legal deliberations and/or the mediation process, there is a finding of discrimination of any of the issues raised in the original discrimination complaint, corrective action(s) and/or sanctions will be taken to rectify the injustice. The respondent may be required to end or amend the act(s) or activity(ies) of discrimination and provide or "make whole" relief. A "make whole" relief is one that provides a benefit, service, or other remedy that satisfactorily replaces a loss caused by the discrimination. Such "make whole" relief might include:

- Back pay, interest, other monetary relief (not to be paid from Federal funds);
- Hire or Reinstatement;
- Retroactive Seniority;
- Promotion;
- Benefits or other services discriminatorily denied; or
- Any such other remedial or affirmative relief deemed necessary.

All corrective actions and sanctions shall be spelled out in a corrective action plan which will specifically list any finding(s) of discrimination and will also address the steps the respondent must take to accomplish voluntary compliance. For each corrective action, a time frame will be established to provide a minimum time necessary to completely correct the violations and provide, where appropriate, retroactive and prospective relief.

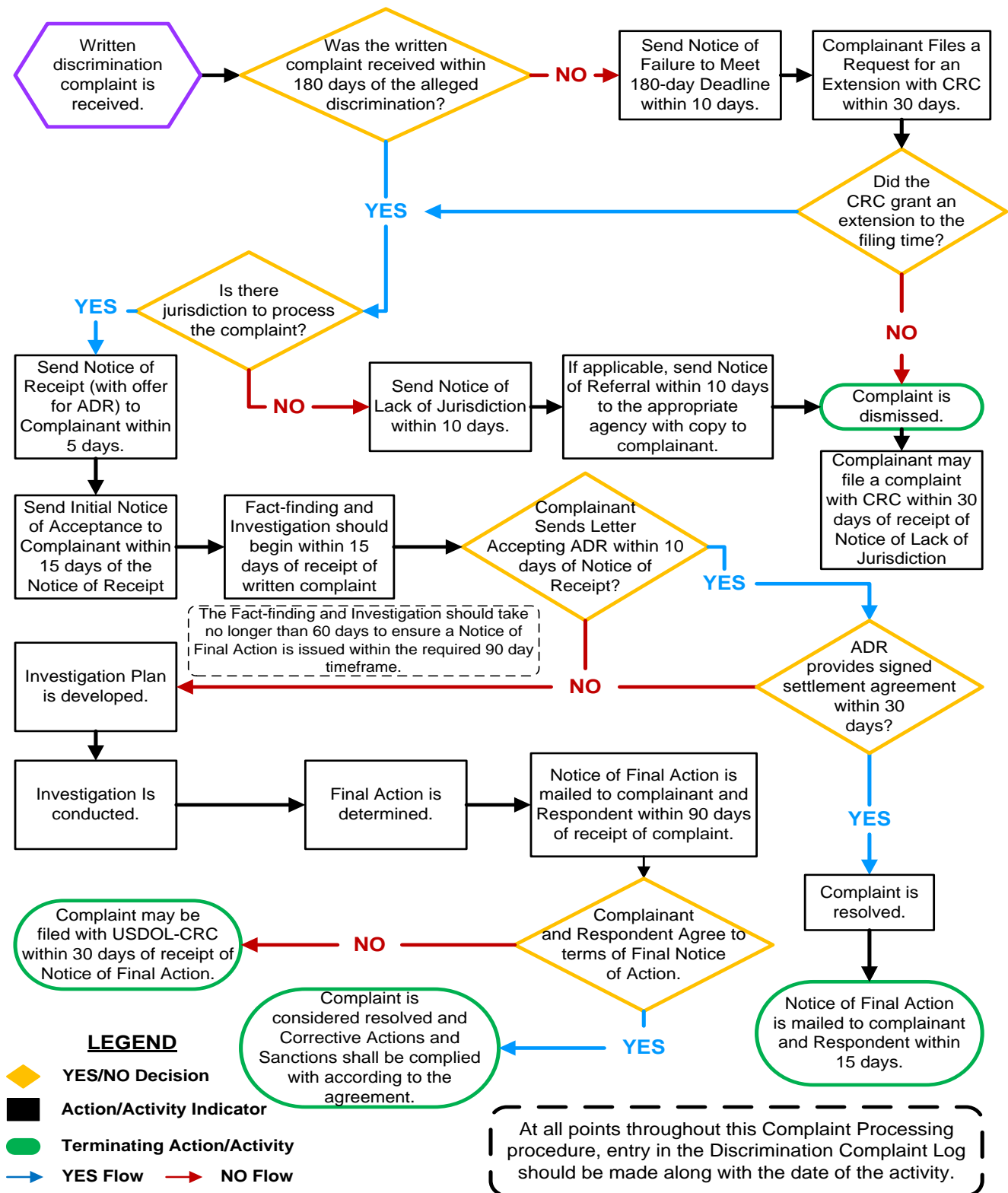
Additional sanctions may be imposed on the respondent in instances where they fail to comply with the resolutions of the agreement. Sanctions that may be imposed might include (but are not limited to):

- Deferral of action on the respondent's applications for new WIA financial assistance;
- Referral to the CRC or the Attorney General for appropriate legal action;
- Disallowance of selected costs (i.e. salaries);
- Partial funding;
- Temporary suspension of financial assistance until compliance is achieved;
- Offsets;

- Legal action under the state contract law, based upon the recipient's assurance of compliance with the WIA, federal regulations, state law, and governor's directives; and
- Any other actions as may be provided by law.

While ADR is an informal process, it leads to a binding agreement (including corrective actions and sanctions) by both parties to the dispute.

DISCRIMINATION COMPLAINT PROCESSING FLOWCHART



CASE STUDIES

In the course of duties as an Equal Opportunity Officer, many types of complaints will be received and be required to be reviewed. To provide a better understanding of each of the types of complaints and all of the steps necessary to properly process them, several case studies can be reviewed. These case studies will vary from the basic Programmatic complaints, to the more challenging complaints alleging multiple acts of discrimination.

INITIAL CASE STUDY

The first case study is a complaint that alleges only Programmatic issues. This is not a complaint of discrimination. It should be handled as a Grievance and not a Discrimination issue.

Refer to the Grievance and Complaint Procedures in such a case. WIA Policy Letter No. 04-05, WIA Grievance and Complaint Procedures (Non-Discrimination) covers this type of allegation. Also, any complaint alleging an incident of known or suspected fraud, program abuse or criminal conduct in WIA funded programs should be handled through the WIA Policy Letter No. 06-PL-28 Local Workforce Investment Act (LWIA) Incident Reporting Responsibilities.

ADDITIONAL CASE STUDIES

In order to understand the complaint processing procedures, several other complaints will be reviewed. Utilizing all of the information presented to this point, each case should be reviewed to determine timeliness and proper jurisdiction. Once it has been determined that the complaint has been filed within the proper timelines and falls under the jurisdiction of the local office, the case should be evaluated to provide an analysis of the information, utilize the Investigation Plan to develop questions and a list of information needed to be acquired during the investigation, conduct the investigation, and determine Final Actions, including the proper corrective actions and/or sanctions.

CASE STUDY DISCUSSION

When presented with a complaint alleging discrimination, several areas need to be addressed to determine the validity of the complaint and any necessary responses to it. The Investigative Plan, along with the following seven elements, should be utilized to gather all needed information. The questions within each element will assist in the information gathering process, as well as prompt additional questioning and requests for documentation.

Element 1 - Timeliness and Jurisdiction

- Was the complaint filed within the proper timeline (or did the CRC give an extension)?
- Does the complaint fall within the jurisdiction of the Agency?

Element 2 - Type of Discrimination/Protected Class

- What is the basis of the complaint (i.e. what is the protected class)?
- Is the complainant a member of the protected class (what supporting information is needed)?

Element 3 - Adverse Action/Similarly Situated

- Did the complainant suffer harm or duress from the act(s) or activity(ies)?
- Was the individual (or group) treated differently than persons of another protected class?

Element 4 - Qualifications

- Did the complainant meet any eligibility requirements?
- Is the complainant otherwise qualified (i.e. are they capable of performing the essential functions required)?

Element 5 - Respondent's Reasoning

- What was the reason for the "adverse action?"
- Would the respondent have suffered "undue hardship" if not for the adverse action?

Element 6 - Pre-Text Confirmation

- Has the complainant proven the respondent's reasoning is untrue and pre-text for discrimination?

Element 7 - Corrective Action & Sanctions

- Has the complainant requested corrective actions, if so, what are they?
- Should sanctions be imposed on the respondent, if so, what should they be?

FORMS

This section provides several forms (and instructions) that will be used during the complaint filing, information gathering, and investigative process. The forms that follow include:

- US DOL, CRC Complaint Information Form
- CRC Complaint Information Form Instructions
- CRC Notice about Investigatory Uses of Personal Information
- Consent Form acknowledging receipt and understanding of the Notice about Investigatory Uses of Personal Information
- Discrimination Complaint Log
- Discrimination Complaint Log Instructions
- Investigative Plan worksheet

U.S. Department of Labor
Civil Rights Center

49

DISCRIMINATION COMPLAINT PROCESSING

[illegible]

Complaint Processing Guidelines For Completing the Complaint Information Form

United States Department of Labor Civil Rights Center

The Local Workforce Investment Board or Civil Rights Center (CRC) officially records all discrimination complaints by utilizing the Complaint Information Form (CIF). The information provided assists both organizations with making a determination of coverage. It is important that the form be as complete, legible, and clear as possible. **Forms that are not signed, illegible or do not have complete information delays processing time.**

- Item 1: The *complainant* is the person alleging the discrimination. This can be a third party. This information should be printed; include full name, address, and telephone numbers where complainant can be reached. Disclosure of a social security number is strictly voluntary.
- Item 2: The *respondent* is the program or activity responsible for the alleged discrimination. This information should be printed and include complete names of program without acronyms, names and titles of the organization or person involved with complete mailing addresses and telephone numbers.
- Item 3: State the most convenient time and place to be contacted by the Equal Opportunity Office or a third party.
- Item 4: This information is provided to determine the timeliness of the complaint. The dates that the discrimination took place, reflecting the first instance of discrimination and the date of occurrence should reflect the most recent adverse action, if there was more than one occurrence over a period of time.
- Item 5: This information is provided to determine if the complainant has attempted to resolve the complaint locally and if a resolution was issued and if the complainant was given an option to choose mediation or an investigation.
- Item 6: The complainant briefly describes the circumstances surrounding the alleged discrimination including those individuals included. Attach any information or documentation that might be relevant. Please note that individual complaints should be written in the first person and describe as much of the following as possible (additional sheets may be attached):
- What adverse action was taken against you – include dates, places and names of individuals including witnesses
 - How you believe the treatment by the respondent was discriminatory
 - How the treatment relates to your sex, race, national origin, etc.
 - Describe any treatment that was different from any other individual or group
- Item 7: This information asks that the U.S. Department of Labor Programs involved in the discrimination be identified. If the complainant is alleging discrimination against more than one entity, a separate form must be completed for each individual entity.

- Item 8: This information is a checklist of protected classifications under Section 167. The complainant should check only the classes that are believed were reasons for the discrimination as there may be more than one basis for the discrimination.
- Item 9: This is a checklist to assist the complainant with identifying the issue(s) that resulted in the discriminatory act. It is not intended to be all-inclusive, but in most instances, the issues correspond to the description given in *ITEM 6*.
- Item 10: This allows the complainant to explain why they believe the events occurred, and to relate the events to the checklist in *ITEM 8*.
- Item 11: This gives the complainant an opportunity to add any additional information believed to be relevant.
- Item 12: The complainant should describe the corrective actions believed necessary to resolve the complaint. Remedies should be pertinent and reasonable to the nature of the issue(s).
- Item 13: The complainant should list any person the investigator should contact for information in support of or for clarification of the complaint. *A name without an address or telephone number will not be useful.*
- Item 14: If an attorney shall represent the complainant, it should be noted.
- Item 15: The complainant should state all agencies that he/she has filed a complaint with to include dates, status of the complaint, and any other information available.

NOTE: When the complainant is an organization filing on behalf of a class of individuals or when the complainant is a third party authorized to represent the injured party, the Civil Rights Center (CRC) must establish the injured party's willingness to secure the complaint on behalf of another, who for fear of retaliation or other reasons, may be unwilling to take an active role in filing the complaint.

U.S. Department of Labor, Civil Rights Center

NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION

Two Federal laws govern personal information to Federal Agencies, including the Civil Rights Center (CRC: the Privacy Act of 1974 (5 U.S.C. 552) and the Freedom of Information Act (5 U.S.C. 552) or "FOIA". Please read this description of how these laws apply to information connected with your complaint. After reading this notice, please sign and return the consent agreement printed on the back of this notice, along with your complaint form.

The PRIVACY ACT protects individuals from misuse of personal information held by the Federal government. The law applies to records that are kept and can be located by the individual's name, social security number, or other personal identification system. Anyone who submits information to CRC in connection with a discrimination complaint should know the following:

- CRC has been authorized to investigate complaints of discrimination on the basis of race, color, national origin, age, and handicap, and in some programs on the basis of sex, religion, citizenship, and political affiliation or belief, in programs that receive Federal funds through the Department of Labor. CRC is also authorized to conduct reviews of federally funded programs to assess their compliance with civil rights laws.
- Information that CRC collects is analyzed by authorized personnel within CRC. This information may include personnel or program participant records, and other personal information. CRC staff may want to reveal some of the personal information to individuals outside the office in order to verify facts related to the complaint, or to discover new facts which will help CRC determine whether the law has been violated. Such information could include, for example, the physical condition or age of a complainant. CRC may also have to reveal personal information to a person who submits a request for disclosure authorized by the Freedom of Information Act.
- Information submitted to CRC may also be revealed to persons outside of CRC because it is necessary in order to complete enforcement proceedings against a program that CRC finds to have violated the law or regulations. Such information could include for example, the name, income, age, marital status or physical condition of the complainant.
- Any personal information you provide may be used only for the specific purpose for which it was requested. CRC requests personal information only for the purpose of carrying out authorized activities to enforce, and determine compliance with, civil rights laws and regulations. CRC will not release personal information to any person or organization unless the person who submitted the information gives written consent, or unless release is required by the Freedom of Information Act.
- No law requires that a complainant reveal personal information to CRC, and no action will be taken against a person who denies CRC's request for personal information. However, if CRC cannot obtain the information needed to fully investigate the allegations in the complaint, CRC may close the case.
- Any person may ask for, and receive, copies of all personal materials CRC keeps in his or her file for investigatory use.

AS A POLICY, CRC DOES NOT REVEAL NAMES AND OTHER IDENTIFYING INFORMATION ABOUT INDIVIDUALS UNLESS IT IS NECESSARY TO COMPLETE INVESTIGATION OR ENFORCEMENT ACTIVITIES AGAINST A PROGRAM WHICH HAS VIOLATED THE LAW. CRC never reveals to the program under investigation the identity of the person who filed the complaint, unless the complainant first gave CRC written permission to do so.

The FREEDOM OF INFORMATION ACT (FOIA) gives the public maximum access to Federal government files and records. Persons can request, and receive, information from many types of records kept by the Government-not just materials that apply to them personally. The Civil Rights Center must honor most requests for information submitted under FOIA, but there are exceptions.

- CRC is usually not required to release information during an investigation or an enforcement proceeding if that release would limit CRC's ability to do its job effectively; and
- CRC can refuse to disclose information if release would result in a "clearly unwarranted invasion" of a person's privacy.

PLEASE READ AND SIGN SECTION A OR SECTION B OF THE CONSENT FORM, PRINTED ON THE BACK OF THIS NOTICE, AND RETURN IT TO THE CIVIL RIGHTS CENTER WITH YOUR SIGNED, COMPLETED COMPLAINT INFORMATION FORM.

CONSENT FORM

I have read the Notice about Investigatory Uses of Personal Information, printed on the front of this form. I understand the following provisions of the Privacy Act and Freedom of Information Act, which apply to personal information I reveal to the Civil Rights Center in connection with my complaint:

In the course of investigating my complaint, CRC may have to reveal my identity to staff of the program named in my complaint in order to obtain facts and evidence regarding my complaint;

I do not have to reveal any personal information to CRC, but CRC may close my complaint if I refuse to reveal information needed to fully investigate my complaint;

I may request and receive a copy of any personal information CRC keeps in my complaint file for investigatory uses; and

Under certain conditions, CRC may be required by the Freedom of Information Act to reveal to others personal information I have provided in connection with my complaint.

SECTION A

- ☐ YES, CRC MAY DISCLOSE MY IDENTITY IF NECESSARY TO INVESTIGATE MY COMPLAINT. I have read and understand this notice, and I consent for CRC to process my complaint.

(Signature)

(Date)

SECTION B

- ☐ NO, CRC MAY NOT DISCLOSE MY IDENTITY, EVEN IF NECESSARY TO PROCESS MY COMPLAINT. I have read and understand the notice, and I do not consent for CRC to disclose my identity during investigation of my complaint. I request that CRC process my complaint, however, I understand that CRC may cancel my complaint if it cannot fully investigate without disclosing my identity. I also understand that CRC may close my complaint if it cannot begin an investigation because I have not consented for CRC to reveal my identity.

(Signature)

(Date)

[illegible]

Name of Entity: _____

[illegible]

U.S. Department of Labor
Office of the Assistant Secretary for Administration and Management
CIVIL RIGHTS CENTER
Room N-4123
200 Constitution Avenue, NW
Washington, DC 20210

The following table provides information for all State Workforce Investment Act (WIA) agencies, State Workforce agencies and Job Corps program contractors to assist in the entering of discrimination complaint data into the *Revised Discrimination Complaint Log* format provided by the U.S. Department of Labor (USDOL) Civil Rights Center (CRC). Questions or other concerns regarding this information, the discrimination complaint log, format and maintenance should be addressed to Pir Ahmad at (202) 693-6560 or via e-mail at ahmad.pir@dol.gov.

Discrimination Complaint Log Fields			
Column	Column Name	Data Entry	
A	Date of Complaint	Date complaint was filed; format MM/DD/YY; Example - 06/02/04	
B	Name of Complainant	Complete name of individual filing complaint.	
C	Address of Complainant	Complete address of complainant.	
D	Status of Complainant	Employee	Current or former employee and/or applicant for employment of respondent.
		Student	Current or former Job Corps Center student/enrollee.
		WIA Participant	Beneficiary of programs financially assisted by DOL under the Workforce Investment Act.
		Customer	A beneficiary of programs under the Wagner-Peyser Act and the Unemployment Insurance Program.
		Applicant	An individual who has applied for services/benefits in programs financially assisted by DOL under the Workforce Investment Act,

			the Wagner-Peyser Act and the Unemployment Insurance Program.
		Service Provider	Encompasses any “provider of aid, benefits, services, or training to” any WIA Title I – financially assisted program or activity.
		Non-Customer	Individual is not a customer, applicant, student, employee, WIA participant or service provider and is not a beneficiary of any of the services/programs administered or are financed in whole or part with WIA Title I funds, the Wagner-Peyser Act or the Unemployment Insurance Program.
E	DOL-funded Program	Enter the name of the DOL-funded program (i.e. Employment Services (ES); Unemployment Insurance Program (UI); WIA Title I (WIA); Job Corps Centers; Trade Adjustment Act (TAA).	
F	Date of Alleged Discriminatory Incident	Date of the incident, which led to the filing a complaint alleging discrimination; format MM/DD/YY; Example - 06/02/04.	
G	Grounds/(Bases) of Complaint	Enter grounds (bases) of complaint; i.e. age, sex, color, religion, disability, citizenship, race, reprisal, national origin, WIA Title I participation and political affiliation (see 29 CFR 37.5). Example – sex (F); color (White); national origin (Arab).	
H	Description/Issue of Complaint	Enter a brief description of the complaint issue; Example – denial of training; racial slurs; sexual harassment; denial of services; hostile work environment.	
I	Name of Respondent	Name of Complaint Respondent.	
J	Is Respondent a recipient? Yes or No	Enter either “ Yes ” or “ No .” Based on the definition of a recipient provided in the comment section of the Discrimination Complaint Log.	
K	Disposition	Enter the outcome of the complaint; Example – Settled; Resolved; No Probable Cause; Withdrawn, etc.	
L	Date of Disposition	Enter date of disposition (specified in Column G (Disposition); format MM/DD/YY; Example – 06/02/04.	
M	ADR “Yes” or “No”	Enter “ Yes ” if complaint was processed utilizing an ADR procedure; or “ No ” if not.	

INVESTIGATIVE PLAN: _____ **Complainant (C)** _____ **Recipient (R)** _____ **Page** _____ **of** _____

Complaint No. _____ **Date** _____ **Page** _____

Complaint Allegations	Potential Violations	Legal Theory DT/DI	Questions to be Answered	Information on File	Further Information Needed	Source
		(Disparate Treatment and/or Disparate Impact)				

GLOSSARY

DEFINITIONS

It is important to know and understand the many words and terms that are found throughout the legal documentation that will be utilized during the complaint processing activities. Following are many of those terms and words.

Adverse Action - A harmful or unfavorable act or response that affects the terms or conditions of employment, acceptance into or continuation of a program or training, or eligibility for or receipt of a particular benefit. Examples of "adverse action" include hiring, promotion, compensation, discharge/termination, transfer, recall, layoff, testing, enrollment, referral, training, placement, access/accommodation, job classification, discipline, etc.

Class Action - A lawsuit filed by one or more people on behalf of themselves and a larger group of people "who are similarly situated."

Complainant - The person or organization making an allegation of discrimination. (Sometimes referred to as the "claimant" or charging party).

Denial of an Accommodation - Applies when there is a "legal obligation" to provide a qualified individual with a reasonable accommodation.

Disparate Impact - An unnecessary discriminatory effect on a protected class caused by an employment practice or policy that appears to be nondiscriminatory. These involve claims that a recipient is violating nondiscrimination regulations by utilizing a neutral policy or practice that has the effect of disproportionately excluding or adversely affecting members of a protected group, and the recipient's policy or practice lacks a "substantial legitimate justification."

Disparate Treatment - The treatment of an individual that is less favorable than treatment of others for discriminatory reasons because of their race, religion, national origin, sex, or disability. Also occurs when individuals are subjected to harassing behavior based on their protected class which is severe or pervasive enough to have a negative impact on their ability to work or learn or to create a hostile environment.

Empathetic Listening - The process of listening to individual so that he/she feels heard in a non-judgmental way.

Individuals with Disabilities - A person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, or a person has a record of such impairment, or a person regarded as having such impairment.

Pre-Text - Occurs when an individual is qualified for and fails to receive the desired treatment and the employer's stated reason for the difference is unworthy of belief. In other words, the reasons given were serving to conceal plans.

Prima Facie - meaning "on its first appearance", or "by first instance" used in common law jurisdictions to denote evidence that is sufficient, if not rebutted, to prove a particular proposition or fact. In most legal proceedings, one of the parties has the burden of proof, which requires that party to present *prima facie* evidence of all facts essential to its case. If that party fails to present *prima facie* evidence on any required element of its case, its claim may be dismissed without any response by the opposing party. A *prima facie* case may be insufficient to enable a party to prevail if the opposing party introduces contradictory evidence or asserts an affirmative defense. Sometimes the introduction of prima facie evidence is informally called *making a case* or *building a case*.

Qualified Individuals with Disabilities - A person with the skills, experience, education, and other requirements of the job the individual holds or desires, can perform the essential functions of the position with or without reasonable accommodation, and who meet normal and essential eligibility requirements.

Reasonable Accommodations - Adapting the job site or job functions for a qualified person with a disability to enable an individual with a disability to enjoy equal employment opportunities.

Recipient - For purposes of WIA, One-Stop partners, as defined in section 121(b) of WIA, are treated as "recipients," and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the One-Stop delivery system.

Respondent - The person or organization against whom an allegation of discrimination is being filed.

Retaliation: Occurs when adverse action is taken against individuals because they file discrimination complaints, oppose discriminatory practices, or participate in investigations of discrimination complaints.

Similarly Situated -Refers to the people represented by a plaintiff in a "class action," brought for the benefit of the party filing the suit as well as all those "similarly situated." To be similarly situated, the defendants, basic facts, and legal issues must be the same, and separate lawsuits would be impractical or burdensome.

Undue Hardship - An action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

SAMPLE LETTERS FOR DISCRIMINATION COMPLAINTS

This section provides several Sample Letters that may be used during the processing of a complaint alleging discrimination. The letters that follow include:

- SAMPLE 1 – NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT
(Failure to meet 180-day Deadline)
- SAMPLE 2 - NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT
(Not within Jurisdiction)
- SAMPLE 3 - NOTICE OF REFERRAL TO OUTSIDE AGENCY
- SAMPLE 4 – NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT
- SAMPLE 5 - INITIAL NOTICE OF ACCEPTANCE
- SAMPLE 6 - LETTER ACCEPTING THE ALTERNATIVE DISPUTE RESOLUTION PROCESS
- SAMPLE 7 - NOTICE OF FINAL ACTION AGAINST THE COMPLAINANT

SAMPLE 1 – NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT

(Failure to meet 180-day Deadline)

August 1, 2006

Mr. John Doe
1111 Washington
Anycity, Illinois 66666

Dear Mr. Doe:

The Local Workforce Investment Board received your written complaint of discrimination dated July 27, 2006. In your complaint, you raised the following issues:

- You state that you applied for WIA Dislocated Worker Services on January 13, 2006, but were denied these services because of your national origin (Hispanic).

We have determined that we cannot accept and review this complaint because it was not received within 180 days of the alleged discriminatory action as required by law [reference 29 C.F.R. §37.72].

If you are dissatisfied with our determination that these issues cannot be accepted, you may file a complaint with the U.S. Department of Labor, Civil Rights Center (CRC). You must file your complaint with CRC within 30 days of receipt of this notification. The address for the CRC is as follows:

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-4123
Washington, DC 20210

Sincerely,

Equal Opportunity Officer

SAMPLE 2 - NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT

(Not within Jurisdiction)

June 1, 2006

Ms. Jane Smith
1111 Washington
Anycity, Illinois 66666

Dear Ms. Smith:

The Local Workforce Investment Board received your written complaint of discrimination dated May 30, 2006. In your complaint, you raised the following issues:

- You state that you are employed with XYZ, Inc. However, the complaint alleges that the employer did not provide you with a pay rate the same as male counterparts having the same or substantially similar work on a job whose performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

We have determined that the issue you raised falls under the jurisdiction of the Illinois Department of Labor (Equal Pay Act of 2003 [820 ILCS 112/]). We made this determination based on the following: your complaint alleges violation of equal employment opportunity law. We have referred your complaint to that agency. A copy of our referral letter is attached.

If you are dissatisfied with our determination that these issues are not within our jurisdiction, you may file a complaint with the U.S. Department of Labor, Civil Rights Center (CRC). You must file your complaint with CRC within 30 days of receipt of this notification. The address for the CRC is as follows:

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-4123
Washington, DC 20210

Sincerely,

Equal Opportunity Officer

Enclosure

SAMPLE 3 - NOTICE OF REFERRAL TO OUTSIDE AGENCY

June 1, 2006

Illinois Department of Labor
160 North LaSalle Street, Suite #C-1300
Chicago, Illinois 60601
(312) 793-6797

RE: Complainant Jane Smith

The Local Workforce Investment Board Equal Opportunity Officer received the enclosed complaint of employment discrimination. In accordance with the Equal Pay Act of 2003 [820 ILCS 112/], the complaint is being referred to your agency for appropriate action.

If this office may be of further service, please contact me at (XXX) XXX-XXXX.

Sincerely,

Equal Opportunity Officer

Enclosure

SAMPLE 4 – NOTICE OF RECEIPT OF DISCRIMINATION COMPLAINT

June 1, 2006

Mr. John Doe
1111 Washington
Anycity, Illinois 66666

Dear Mr. Doe:

The Local Workforce Investment Board received your written complaint of discrimination dated May 30, 2006. In your complaint, you raised the following issues:

- You state that you applied for WIA Dislocated Worker Services on April 13, 2006, but were denied these services because of your national origin (Hispanic).

We have determined that this issue is within our jurisdiction. Your complaint will be processed in accordance with our complaint processing procedures. You have the right to be represented, at your own expense, by an attorney or other individual of your choice during this process. Also, you may choose to use our Alternative Dispute Resolution (ADR) procedure rather than the complaint processing procedure.

The ADR procedure, also known as "mediation" is a service offered at no expense to you. If you decide to use the ADR process you must notify us of this election, in writing, within ten calendar days of receipt of this notice. If we do not receive such notification within ten days, we will initiate our complaint processing procedure. To assist you in the event you would like to utilize the ADR process as an initial method of resolution, complete the attached form to indicate your decision. In any event, we will issue to you a Notice of Final Action within 90 days from the date on which we received your complaint.

You also have the right to file this complaint directly with the United States Department of Labor, Civil Rights Center. You must file your complaint with CRC within 30 days of receipt of this notification. The address for the CRC is as follows:

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-4123
Washington, DC 20210

Should you have any questions, please contact the undersigned at (XXX) XXX-XXXX.

Sincerely,

Equal Opportunity Officer

Enclosure

SAMPLE 5 - INITIAL NOTICE OF ACCEPTANCE OF DISCRIMINATION COMPLAINT

June 10, 2006

Mr. John Doe
1111 Washington
Anycity, Illinois 66666

Dear Mr. Doe:

The Local Workforce Investment Board received your written complaint of discrimination dated May 30, 2006. In your complaint, you raised the following issues:

- You state that you applied for WIA Dislocated Worker Services on April 13, 2006, but were denied these services because of your national origin (Hispanic).

As was previously discussed in our Notice of Receipt to you dated June 1, 2006, it has been determined that this issue is within our jurisdiction. Your complaint will be processed in accordance with our complaint processing procedures, unless you have elected to utilize the Alternative Dispute Resolution (mediation) procedures.

Each of the issues raised in your alleged discrimination complaint will be addressed during mediation or the fact-finding and investigation process. If the investigative process is chosen, it may involve interviews and collection of information from you, the respondent and potential witnesses. You will be contacted soon to request your participation in this portion of the process. At that time, information regarding the fact-finding and investigative process will be discussed.

If this office may be of further service, please contact me at (XXX) XXX-XXXX.

Sincerely,

Equal Opportunity Officer

SAMPLE 6 - LETTER ACCEPTING THE ALTERNATIVE DISPUTE RESOLUTION PROCESS

June 1, 2006

Dear Sirs:

I, _____ (name of complainant), have received your letter acknowledging that you have accepted my discrimination complaint alleging the following:

- I state that I applied for WIA Dislocated Worker Services on April 13, 2006, but was denied these services because of my national origin (Hispanic).

I would like to utilize the Alternative Dispute Resolution (ADR) or mediation process as a means to resolve my complaint. I understand that the process is free of charge. I further understand that I do not have to be represented by an attorney, but may choose to do so at my own expense. A third-party mediator will be utilized to assist in resolving this dispute.

I understand that the mediation process is confidential and only those parties involved in discussions will have knowledge of such discussions. I understand that I may choose to have an individual meeting with the mediator during the process to voice any concerns in a private and confidential setting. Finally, I understand that the mediator is not a judge, there will not be a jury involved to resolve this dispute, and I may at any point in time choose to abandon the mediation process and proceed with a formal litigation if I am not fully satisfied with the progress of the discussions.

(Please check one of the following to indicate the need for an accommodation of a disability during the Alternative Dispute Resolution process.)

_____ I will not require any accommodations to ensure my full participation in the ADR process.

_____ I have a disability that will require the following accommodations to ensure my full participation in the ADR process (please list the accommodations you are requesting):

I understand that I will be contacted within fifteen (15) calendar days to schedule and begin the mediation process. Scheduling of the process will involve an agreed upon time and location for each meeting.

(Signature of the Complainant)

(Date)

SAMPLE 7 - NOTICE OF FINAL ACTION AGAINST THE COMPLAINANT

June 1, 2006

Ms. Jane Doe
1111 First Avenue
Anytown, Texas 77777

Dear Ms. Doe:

We have completed a review of your complaint against XYZ Workforce Center (Center), alleging that you were discriminated against on the basis of your gender (female). In your complaint, you stated that the Center representative would not refer you for a job listing because it is a construction job and you are a female. Our review included an assessment of all the information/documentation submitted by you and by the Center.

Based on our review of the available evidence, we have determined that it cannot be established that the Center has discriminated against you. The available evidence indicates that you were not referred to the construction job because the employer was no longer taking applications because all positions had been filled.

This letter is our Notice of Final Action regarding your complaint.

If you are dissatisfied with our determination, you may file a complaint with the U.S. Department of Labor, Civil Rights Center (CRC). You must file your complaint with CRC within 30 days of receipt of this notification. The address for the CRC is as follows:

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-4123
Washington, DC 20210

Should you have any questions, please contact the undersigned at (XXX) XXX-XXXX.

Sincerely,

Equal Opportunity Officer

RESOURCES

This manual and the contents included have been developed utilizing the following resources:

- State of Illinois, Department of Commerce and Economic Opportunity, Methods of Administration, Element 8 - Complaint Processing Procedures and Element 9 - Corrective Actions and Sanctions
- United States Department of Labor, Civil Rights Center (CRC) - <http://www.dol.gov/oasam/programs/crc/aboutcrc.htm>
- United States Equal Employment Opportunity Commission, Mediation - <http://www.eeoc.gov/mediate/index.html>
- United States Department of Justice, ADA Mediation Program - <http://www.usdoj.gov/crt/ada/>
- United States Department of the Navy, Civilian Human Resources - EEO Module 3: Discrimination Complaint Processing
- United States Department of Health & Human Services, Office for Civil Rights - <http://www.hhs.gov/ocr/504.html>

STATE POLICY

This section provides State of Illinois, Department of Commerce and Economic Opportunity (DCEO) Workforce Investment Act (WIA) Policies that are applicable to the filing and processing of discrimination complaints, grievances, and incident reporting. The policies that follow include:

- PY'00 EO/WIA Policy Letter No. 00-08 - Methods of Administration - Element 8 - Complaint Processing Procedures (June 20, 2001)
- PY'00 EO/WIA Policy Letter No. 00-09 - Methods of Administration - Element 9 - Corrective Actions/Sanctions (June 20, 2001)
- WIA Policy Letter No. 04-05 - WIA Complaint and Grievance Procedures (Non-Discrimination) (June 10, 2005)
- WIA Policy Letter No. 06-PL-28 - Local Workforce Investment Area (LWIA) Incident Reporting Procedures (May 4, 2007)

